HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.927 OF 2002.

Nagnath @ Ambadas Balasaheb
Savanji, Age: 25 years,
R/o: Naganegalli, Tal: Mangelwedha,
Dist: Solapur.
(presently Lodged in Yerwada
Central Prison, Pune.) ..Appellant.

Versus.

The State of Maharashtra. ..Respondent.

Mr. R. B. Paranjape i/b Mr. D. W. Bhosale for the appellant.
Mrs. M. M. Deshmukh, A.P.P. for the respondent - State.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.
DATE: MARCH 2, 2007.

1. This appeal is directed against the judgment of the 2nd Additional Sessions Judge, Pandharpur dated 26th July 2002 in Sessions Case No. 57 of 1991 whereby the appellant was convicted for an offence punishable under section 302 of the Indian Penal Code, (in short "the IPC") and was sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer R.I. for a period of three months.

2. The accused was charged for committing the murder of Suresh Mahadeo Nagane at Mangalweda, Taluka-Mangalwedha, District-Solapur, intentionally or know-ing that his acts would cause death and thereby was

charged under section 302 of the IPC. According to the prosecution the incident has taken place on 31st December 1990 at about 13.00 to 15.00 hours at village Mangalwedha, District- Solapur.

3. In order to prove the guilt of the accused the prosecution has examined two eye-witneses, namely, Dada Nana Nagane (Pw-1), who has lodged the FIR Exhibit-47 and Pw-2 Tukaram Maruti Nagane. The prosecution has also examined Bandu Dhondiba Raiban, who was a cleaner working on Tempo bearing No. MWC 5859 owned by the family of the appellant accused and which tempo, according to the prosecution, was used by the accused - appellant for running away from the village Mangalwedha to Sangola after the incident. Apart from these three direct witnesses, the prosecution has examined Pw-3 who is a police constable, who has proved Panchnama Exhibits 50 & 51. Panchnama Exhibit -50 is about the place of offence and the blood sample collected from the earth and stones from the place of incident. Panchnama Exhibit-51 is in respect of the attachment of the tempo bearing Registration No.MWC 5859. Pw-4 is a panch-witness. However, the said panch-witness has not supported the prosecution. Witness No.6 - Avinash V. Chafekar is also a panch-wintess who has proved Panchanama Exhibit 68 in respect of the arrest of the accused - appellant and his clothes and knife which was recovered from the

person of the accused. Pw-7 Abdul H. Shaikh is a police constable who has taken the property to the Chemical Analyst. Pw-8 Shamrao Mohite is the Investigating officer. The post mortem report is admitted by the accused. So also, the Inquest Panchnamas Exhibit- 28 29 in respect of the clothes of the deceased were admitted by the accused.

4. On perusal of the post-mortem report of deceased Suresh it reveals that there were four injuries on the dead body of Suresh. They were:

> (i) CLW size 3 cm. x x cm. over 8th intereostal region with sharp edges the depth of the wound is 12 cm. On left anterior ancillary line directed towards the heart with fracture of the 8th rib.
>
> (ii) CLW over the 9th ICS, just below the lower pole of scapula with fracture of 9th rib, directed medially towards the spinal cord on posteriorly, size 3cm. x 2 cm. depth in 8 cm. without perforation of plura.
>
> (iii) Laceration over the mid-axillary line 4 c.m. x 0.5 c.m. on left side.
>
> (iv) Laceration over the mis-axillary line left side, size 5-1/2 cm. in between the two CLW.

5. The post mortem report also reveals that these injuries were ante-mortem. The internal examination also shows that there was perforating injury to the left ventricle of the heart.

6. Inquest Panchnama Exhibit 28, which is admitted by the accused, also makes a reference to all these four injuries. The cause of death given by Doctor who performed the autopsy shows that the probable cause of death of Suresh as due to cardio - vascular failure due to haemorrhagic shock due to perforating injury to the left ventricle of the heart. Thus the post mortem report, the injuries found at the time of the post mortem and the Inquest Panchnama all taken together it is established by the prosecution that the death of deceased - Suresh is homicidal one.

7. Then in order to establish that the accused is responsible for causing the death of Suresh the prosecution has examined two eye-witnesses, namely, Dada Nagane (Pw-1) and Tukaram Nagane (Pw-2). So far as the incident is concerned, Pw-1 has deposed that the deceased was the nephew of Pw-1 and that daughter of one Maruti Laxman Nagane was/ is the wife of the accused, and that the accused has deserted his wife and therefore the relationship between Maruti Nagane and accused were strained. The accused was demanding the expenses of marriage from his father-in-law Maruti. However, Maruti had not paid the expenses, and Maruti was in the company of Suresh and therefore the accused had perception that because of Suresh, Maruti i.e., his father-in-law is not making payment of money to him and therefore the accused was annoyed with Suresh. He has

further deposed that the day of incident was a bazar-day of village Mangalwedha, and the bazaar used to take place in a Square known as "Damaji Square" where a statue of Damaji has been installed.

. He has further stated that it was about 11.00 a.m. when he returned from Solapur to Mangalwedha, and after taking lunch he went to Pan-shop which was being run by one Mr. Gove near the Damaji's statue. There was a Ganpati temple behind the Pan-stall and some people were gambling in between them. He has further deposed that Anil Chavan and the accused were there and some altercation had taken place between them. After sometime Suresh arrived there. At that time the accused was at some distance on Pandharpur road and Anil Chavan was standing near the statue of Damaji. Suresh asked Anil Chavan what was the matter. Then the accused came running back to the statue. He caught the shirt of Suresh near neck and started assault on Suresh. Pw-1 claims that he separated them, however the accused gave a jerk and took out a knife from the trouser. Having seen knife in the hands of the accused, Pw-1 stated that he asked Suresh to run away. However, the accused armed with knife went on the person of Suresh and dealt knife blow on the chest and above abdomen of Suresh. This witness proceeded ahead and caught hold of the hand of the accused. In his efforts, the witness claims that he

sustained injury to his left wrist. Witness has further stated that the accused got released his hand from him and dealt knife blow on the back of Suresh and Suresh sustained a bleeding injury and ultimately succumbed to the death. After the Doctor declared Suresh dead, this witness has lodged the FIR immediately with the police station. Though this witness has been cross examined at length nothing has transpired in his cross examination of worth to disbelieve this witness.

. On the contrary the cross examination of Pw-1 shows that the accused was very much present at the time of the incident however the attempt is being made to make out a case that it was a quarrel between Anil Chavan and Suresh and in that scuffle Suresh has received injuries from the knife of Anil Chavan. Even a written defence to that effect has been filed by the accused at Exhibit- 81. Since we find that there is nothing to disbelieve Pw-1, we accept the testimony of Pw-1 who is eye-witness.

. Pw-1 is also supported by Pw-2, Tukaram Maruti Nagane. Pw-2 has stated that on the bazaar day he had been to Damaji Square for making payment to the employees, and having found that the crowd is there and the quarrel in between the deceased Suresh and accused, he claims that he proceeded further and tried to

separate. He stated that in the meanwhile the accused took out a knife, thereafter Dada Nagane (Pw-1) shouted asking Suresh to run away. However, in the meanwhile the accused gave a knife blow on the abdomen of Suresh. He has stated that Pw-1 Dada Nagane caught the accused to take him aside, however, accused gave a jerk to Dada Nagane and gave a second blow to Suresh which was given on the back of Suresh and thereafter the accused ran away. He stated that Suresh was taken to the Hospital where he was declared dead. From the cross examination of this witness also nothing transpires which will discard the credibility of this witness. Thus, Pw-1 is materially corroborated by another witness i.e., Pw-2 so far as the main incident is concerned.

8. It is worth to note that the accused-appellant was arrested by the Bund-Garden Police station at Pune on 12.1.1991 while the incident has taken place on 31st December 1990, that means the accused was traced and found after a period of 12 days of the incident. The testimony of Pw-5 Dhondiba shows that he was in the employment of the family of accused as a Cleaner on tempo bearing Registration No. MWC-5859. He stated that the said tempo was standing near S.T.Stand at Mangalwedha and driver- Bhagwat Kondubhairy had gone to his house to take lunch, however the keys of the tempo were in the tempo, and at about 1.30 noon the accused came running to the tempo.

The accused got himself in the tempo and drove it away. He has stated that the accused was frightened and his hands were having blood stains. The accused has taken the tempo by Kasegaon road to Sangola. Pw-5 was in the said tempo along with the accused. He has further stated that at Sangola the accused purchased one baniyan and has worn it and asked Pw-5 to take the tempo to Mangalwedha, and thereafter this witness drove the tempo from Sangola to Mangalwedha. He has stated that while returning to Mangalwedha, the accused had not returned. He parked the tempo at Sawaji Adda and the keys were handed over to the father of the accused. This witness was cross examined at length, however, nothing has transpired so as to disbelieve this witness. Thus, it is clear that in the presence of this witness by using the tempo bearing No. MWC 5859 the accused absconded from the place of the incident. Thereafter the accused was ultimately traced and was found in Pune. The fact that the accused had absconded coupled with the other evidence is weighty evidence against the accused.

9. It is further to be found that as per the Panchnama Exhibit-51 the said tempo was found at Sawaji Adda wherein the blood stained clothes were found and the blood stains were also found on the door of the tempo. Thus, this evidence corroborates the testimony of Pw-5. Pw-5 is an independent witness having no

enmity with the accused and therefore his evidence on the point of the accused absconding can be safely accepted. Thus, the evidence which has been brought on record shows that the accused - appellant is responsible for causing the death of Suresh.

10. Then the main question is what is the offence committed by the accused. One thing is certain that there was no direct enmity between the accused and deceased - Suresh. One of the motive which is suggested is the strained relation of the accused with the father-in-law of the deceased, namely, Maruti Nagane. However, only because the deceased was in the company of Maruti Nagane it cannot be said that the accused and deceased were on inimical terms. Nothing has been brought on record to demonstrate that there was enmity between them. Even according to the prosecution on the day of incident some altercation appears to have taken place in between Anil Chavan and accused and at that time the deceased had come there and asked Anil Chavan what was the matter. At that time the accused has rushed on him and inflicted the injuries as stated by the eye-witnesses. It has come in the cross-examination that there was no abuse and altercations between the accused and the deceased. There is nothing on record to demonstrate that the accused had predetermined mind or plan so as to commit the murder of Suresh. On the contrary, it transpires

that Anil Chavan and accused were the persons participating in the gamble on pictures and they were together. Therefore the possibility cannot be ruled out that the accused apprehended that Suresh would accost or was likely to beat Anil, and therefore the accused rushed on Suresh and inflicted the injury. The evidence on record does not show that there was any serious dispute between the parties and/or motive so as to commit the murder of Suresh. In a bazar-day all of sudden the incident has taken place. We find that the incident is not a calculated action on the part of the accused. Therefore, we find that the accused though responsible for the death of Suresh has not committed the offence punishable under section 302 but he has definitely committed the offence punishable under section 304-I of the IPC, namely, that the accused knew the consequences of the injuries inflicted on the chest and back especially close to the heart, and therefore we find that this is a case of Section 304-I. On a scrutiny of evidence, we do not find any material to come to an inference that at the time of the incident the accused had an intention to commit the murder of Suresh. Therefore if an inference cannot be drawn that the death was intentionally caused, then in these circumstances Part-I of Section 304 of IPC is the proper section which can be invoked in the present matter. Since two blows were given, we find that this is a case of Section 304-I of the IPC and therefore we

partly allow the appeal and alter the conviction and sentence and pass the following order.

O R D E R

1. Appeal is partly allowed.

2. Conviction of the appellant under section 302 of the Indian Penal Code is set aside, and instead the appellant is convicted under section 304-I of the Indian Penal Code and is sentenced to suffer imprisonment for a period of 10 years and to pay a fine of Rs.5,000/- and in default to suffer R.I. for 3 months.

3. Rest of the order is confirmed.

(SMT. NISHITA MHATRE, J.) **(S.B.MHASE, J.)**